

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

06-cr-213-bbc
10-c-93-bbc

v.

BRIAN BILLUPS,

Defendant.

Defendant Brian Billups has filed a motion for post conviction relief pursuant to 28 U.S.C. § 2255, a motion for appointment of counsel, motion for an extension of time to file a brief in support of his § 2255 motion and application to proceed in forma pauperis. He alleges that his sentencing was improper because he was sentenced as a career offender under U.S.S.G. § 4B1.1(a), based in part on a prior Wisconsin felony for false imprisonment that defendant claims is not a crime of violence. The motion must be denied because defendant raised the same issue on appeal to the Court of Appeals for the Seventh Circuit and his appeal was denied.

Section 2255 motions cannot be used to re-litigate matters that were raised on appeal;

the law of the case doctrine prevents reargument. Varela v. United States, 481 F.3d 932, 935 (7th Cir. 2007). In its opinion, the court of appeals considered the recent Supreme Court decision in Begay v. United States, 128 S. Ct. 1581 (2008) and concluded that defendant's false imprisonment conviction involved purposeful, aggressive conduct that presented a serious potential risk of physical injury to another. The court of appeals held that this court had properly designated defendant as a career offender. The issue is not open for re-argument.

ORDER

IT IS ORDERED that defendant Brian Billups's motion for post conviction relief under 28 U.S.C. § 2255 is DENIED.

FURTHER, IT IS ORDERED that defendant's motion to proceed in forma pauperis, motion for extension of time to file a brief and motion for appointment of counsel are DENIED as moot.

Entered this 3d day of March, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge